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No. 87-1020

Supreme Court, U.S.

FILED

JUL 26 1988

JOSEPH E. SPANIO, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED
OCTOBER TERM, 1987

PAUL S. DAVIS, Appellant

v.

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, Appellee

ON APPEAL FROM THE
COURT OF APPEALS OF MICHIGAN

JOINT APPENDIX

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APPEAL DOCKETED DECEMBER 21, 1987

PROBABLE JURISDICTION NOTED JUNE 27, 1988

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RELEVANT DOCKET ENTRIES

MICHIGAN COURT OF CLAIMS
File No. 84-9451

1984
July 11 Complaint for Refund of Income
Taxes filed.

July 24 Answer of Defendant filed.

1985
Sept 23 Motion of Plaintiff for Sum-
mary Disposition filed.

Oct 25 Brief of Defendant in Response
to Motion filed.

Oct 30 Order Granting Plaintiff Leave
to file Amendment and Supple-
ment to Complaint.

Oct 30 Amendment and Supplement to
Complaint filed.

Oct 30 Memorandum in Support of Plain-
tiff's Motion for Summary
Judgment filed.

Oct 30 Hearing before Judge James R.
Giddings on Motion for
Summary Judgment, and
Oral Opinion of Court.

Nov 7 Order Granting Summary Dispo-
sition in favor of Defendant.

Nov 18 Claim of Appeal by Plaintiff
filed.

MICHIGAN COURT OF APPEALS
File No. 88776

1985
Nov 18 Claim of Appeal filed.

1986
April 30 Appellant's Brief filed.
July 1 Appellee's Brief filed.

1987
Jan 12 Oral Argument before Court.
May 5 Opinion of Court.
May 11 Application for Leave to
Appeal to Michigan
Supreme Court, filed.
Dec 4 Notice of Appeal to United
States Supreme Court, filed.

MICHIGAN SUPREME COURT
File No. 80836

1987
May 11 Application for Leave to
Appeal filed.

May 29 Brief of Defendant in
Opposition to Applica-
tion, filed.

Sept 28 Order Denying Application
for Leave to Appeal.

STATE OF MICHIGAN
IN THE COURT OF CLAIMS
PAUL S. DAVIS, Plaintiff, v.
STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, Defendant.

File No. 84-9451

COMPLAINT FOR REFUND OF INCOME
TAXES (filed July 11, 1984), as amended
and supplemented by AMENDMENT AND
SUPPLEMENT TO COMPLAINT. (filed October
30, 1985).

Now comes the Plaintiff, Paul S.
Davis, appearing pro se, and respect-
fully represents unto this Honorable
Court as follows:

(1) The Plaintiff is a resident of
East Lansing, Michigan, and has been a
resident of the State of Michigan since
1967. During that period, and specifi-
cally for each of the years from 1979 to
1983, inclusive, he has paid Michigan
Income Taxes, pursuant to the Michigan

Income Tax Law (Public Act of 1967, No. 281; M.C.L. 206.1 et seq.).

The Defendant, Department of the Treasury of the State of Michigan, is responsible for the collection of taxes of the State of Michigan, and specifically for the collection of taxes under the Michigan Income Tax Law.

(3) Plaintiff is a former employee of the United States Government, and served as such from 1938 to 1942, from 1946 to 1956, and from 1974 to 1980. Based on his Government service Plaintiff has for some years received Federal Civil Service Retirement benefits, authorized pursuant to the Civil Service Retirement Act (Act of July 31, 1956, as amended; 5 U.S.C. 8331 et seq.). For each of the years from 1979 to 1983 Plaintiff had retirement benefits in the following amounts:

1979	\$ 5,442.00
1980	5,052.00
1981	11,569.00
1982	17,994.00
1983	18,832.00

(4) In filing his Michigan Income Tax returns for each of the foregoing tax years Plaintiff followed the instructions accompanying the forms prescribed by the Defendant, in accordance with Section 30 of the Michigan Income Tax Law, and included all of his Federal Retirement benefits in his taxable income. In each of these years Plaintiff had other retirement benefits from non-Governmental sources exceeding the exemption of \$7500 authorized by Section 30(1)(h)(iii)(A) of that Law.

(5) Subsequent to the decision of the United States Supreme Court in Memphis Bank & Trust Co. v. Garner, ___ U.S. ___, 103 S.Ct. 682, 74 L.Ed.2d

562 (1983), Plaintiff filed Amended Returns for the years 1979 to 1982, excluding his Federal Retirement benefits from his taxable income. In those Amended Returns and an accompanying Petition and Claim, Plaintiff petitioned for refunds of his Michigan Income Taxes paid for those years, in so far as based on Federal retirement benefits. By letter dated April 13, 1984 the Defendant denied Plaintiff's Claim for refund of such taxes.

(6) Plaintiff filed his 1983 Michigan Income Tax Return on or about April 14, 1984. In that Return he included his Civil Service retirement benefits, in the amount of \$18,832.00, and paid the tax thereon under protest, amounting to \$1251.47. Subsequently Plaintiff filed an Amended Return for his 1983 Income Tax, together with a Petition and Claim for refund of the amount paid under protest.

(7) The amounts of the Michigan Income Taxes paid by Plaintiff, based on Plaintiff's Civil Service Retirement benefits, for which Plaintiff filed petitions and claims for refunds, were for each of the foregoing years as follows:

1979	\$ 250.33
1980	232.39
1981	532.17
1982	917.69
1983	<u>1,251.47</u>
Total	\$ 3,184.05

(8) Plaintiff states that the Federal Civil Service Retirement benefits which he receives from the United States Government, since they represent compensation for services, are not legally taxable under the Michigan Income Tax Law. Under accepted principles of inter-governmental immunity and Federal aupremacy compensation of

Federal employees may be taxed by a State only in accordance with specific authorization of the Federal Government.

(9) In the Public Salary Tax Act of 1939 (Act of April 12, 1939, Chapter 59, Section 4; 58 Stat. 575), now substantially codified in 4 U.S.C. 111, the United States consented to "the taxation of pay and compensation for personal services as an officer or employee of the United States." However this consent is subject to the following express qualification, set forth in that statute: "if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." (Underscoring added).

(10) In the Michigan Income Tax Act, the Legislature has completely exempted from the Michigan Income Tax any "Retirement or pension benefits received from a public retirement system of or created

by an act of this state or a political subdivision of this state.' (MCL 206.30 (1)(h)(i)). The effect of this exemption is to create a discrimination against Federal retirement annuitants based on the source of their pensions, since there is no comparable exemption for Federal Retirement benefits.

(11) Plaintiff also asserts that the payment of United States Retirement benefits constitutes the payment of an obligation of the United States, which is specifically exempted from State taxation under 31 U.S.C. 3124, and is also exempted from Michigan Income Tax under Section 30(1)(e) of the Michigan Income Tax Act (MCL 206.30(1)(e)).

(12) Plaintiff states that he is entitled to refunds of his Michigan Income Taxes for the years 1979 to 1983, in so far as such taxes have been paid

and collected on the basis of income from Federal Retirement benefits, in the amounts hereinbefore set forth, aggregating \$3,184.05.

(13) Subsequent to the filing of the Complaint herein Plaintiff filed his Michigan Income Tax return and paid his Income Tax for the year 1984. That return included as part of his income the amount of \$19,068.00, representing Federal Civil Service Retirement benefits, on which the Michigan Income Tax was \$1,115.48, which tax the Plaintiff paid. Plaintiff thereafter filed an Amended Return for 1984 requesting a refund of said amount of \$1,115.48.

WHEREFORE, Plaintiff prays that this Honorable Court:

(A) Adjudge, determine and decree that the Michigan Income Tax Law, in so far as it purports to tax income from Federal Civil Service Retirement benefits, is invalid and unconstitutional.

(B) Enter judgment for the Plaintiff against the Defendant in the sum of \$4,299.53, being the amount of Michigan Income Taxes paid by Plaintiff, based on Federal Retirement benefits, for the years 1979 to 1984, inclusive, together with interest.

Dated: July 11, 1984. As amended and supplemented: October 25, 1985.

[Subscription, address, etc.]

ORAL OPINION OF COURT OF CLAIMS,
October 30, 1985 [set forth in
Jurisdictional Statement, App. C]

ORDER OF COURT OF CLAIMS, November 7,
1985 [set forth in Jurisdic-
tional Statement, App. D]

OPINION OF COURT OF APPEALS, May 5,
1987 [set forth in Jurisdic-
tional Statement, App. A]

ORDER OF MICHIGAN SUPREME COURT
DENYING LEAVE TO APPEAL,
September 28, 1987 [set forth in
Jurisdictional Statement, App. B]